

\*\*E-Filed 8/9/2011\*\*

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION**

MARIA BEDOLLA,  
Plaintiff,

v.

THE BANK OF NEW YORK MELLON TRUST  
COMPANY, NATIONAL ASSOCIATION,  
Defendant.

Case Number 5:11-cv-01865-JF

ORDER<sup>1</sup> GRANTING MOTION TO  
DISMISS WITH LEAVE TO AMEND  
AND VACATING HEARING DATE

[Re: Docket No. 3]

This action arises from a mortgage loan secured by real property located at 3369 Fabeled Oak Court, San Jose, California (“the Property”). Plaintiff Maria Bedolla (“Bedolla”) seeks to set aside a nonjudicial foreclosure sale of the Property that was conducted on April 6, 2010, by Mortgage Electronic Registration Systems, Inc. (“MERS”) acting as beneficiary for the lender under the Deed of Trust.<sup>2</sup> Defendant moves to dismiss the complaint pursuant to Fed. R. Civ. P. 12(b)(6). The Court concludes that the motion is appropriate for determination without oral argument and will vacate the hearing date of August 12, 2011. *See* Civ. L.R. 7-1(b).

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<sup>1</sup>This disposition is not designated for publication in the official reports.

<sup>2</sup> On October 13, 2010, MERS executed an assignment of the Deed of Trust in favor of Defendant The Bank of New York Mellon Trust Company, National Association (“Defendant”). Ex. 4 to Defendant’s Request for Judicial Notice.

1 Pursuant to Civ. L.R. 7-3(a), Bedolla was required to file opposition to the motion not  
2 more than fourteen days after the motion was noticed and served, here not later than June 29,  
3 2011. As of the date of this order, Bedolla has yet to file opposition papers. Because the instant  
4 motion appears well-taken and is unopposed, the motion will be granted, with leave to amend.

5 **ORDER**

6 For good cause shown,

- 7 (1) the motion to dismiss is GRANTED, WITH LEAVE TO AMEND;
- 8 (2) Defendant's request for judicial notice in support of its motion is GRANTED as  
9 to the assignment of the Deed of Trust identified in Ex. 4;
- 10 (4) any amended pleading shall be filed within thirty (30) days after the date of this  
order; and
- 11 (5) the hearing date of August 12, 2011 is VACATED

12  
13 DATED: August 9, 2011

14   
JEREMY FOGEL  
United States District Judge

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Case Number 5:11-cv-01865-JF

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I am an employee of the Office of the Clerk,  
United States District Court, Northern District of California.

On August 9, 2011, I served a true and correct copy of the attached document to each of  
the persons hereinafter listed by placing said copy in a postage paid envelope and depositing  
said envelope in the United States mail, or by placing said envelope in the outgoing mail  
delivery receptacle located in the Clerk's Office:

Maria Bedolla  
3369 Fabled Oak Court  
San Jose, CA 95148

DATED: August 9, 2011

For the Court  
Richard W. Weiking, Clerk

By: \_\_\_\_\_/s/  
Diana Munz  
Courtroom Deputy Clerk